Denver Law Review

Volume 30 | Issue 2 Article 2

June 2021

Uranium Mining Claims Staked on Prior Federal Oil and Gas Leaseholds

William G. Waldeck

URANIUM MINING CLAIMS STAKED ON PRIOR FEDERAL OIL AND GAS LEASEHOLDS

WILLIAM G. WALDECK
of The Montrose Bar

Uranium ore production on the Colorado Plateau has been a tenuous occupation fraught with uncertainty for the independent miner. With the awesome discovery during World War II of the means of releasing atomic energy, a small and relatively insignificant mining business has been catapulted almost overnight into a vital part of the gigantic atomic energy program.

The Colorado Plateau is the chief source of uranium mined within the United States. It is the second largest producing area in the world. The 65,000 acre mesa and rimrock country that comprises the Plateau extends into four states—Colorado, Utah, New Mexico and Arizona. Over 5,000 people are employed within this area in the production of uranium.[1]

Because of the nature of the ore deposits, which are found in small scattered aggregations, instead of in large and continuous concentrations as in other mining industries, uranium is produced by a large number of small, independent miners.

Owing to the fact that the atomic energy program is inextricably interwoven with national security, government control must necessarily be present to a large degree. Partly as a consequence of this, the rights of the independent uranium miners have been uncertain and overhung with doubt.

One of the most serious problems is the controversy which has arisen concerning the validity of uranium claims staked on prior federal oil and gas leaseholds. The successful resolution of this controversy is of great importance to the future development of uranium deposits by private individuals and companies.

Uranium-bearing carnotite ore occurs in areas of sedimentary deposit such as the Colorado Plateau. Such areas are often also potentially productive of oil and gas. For this reason, large portions of these lands, have been subjected for many years to extensive oil and gas leasing. It is estimated by officials of the Bureau of Land Management that 75 percent of the uranium lands on the Colorado Plateau are under federal oil and gas leases.

The vast majority of such leases are in areas where oil and gas production has not been developed. The leases are granted as "non-competitive" leases under a provision of law which applies to "lands not within any known geological structure of a producing oil or gas field." [2]

Subsequent to the authorization of such oil and gas leases, numerous discoveries of uranium ore in commercial quantities

[1] "Mesa Miracle in Colorado, Utah, New Mexico and Arizona," Published by United States Vanadium Company, a Division of Union Carbide & Carbon Corp. Copyright 1952, p. 7.

[2] 30 U.S.C.A. 226.

have been made on lands covered by the leases; hundreds of mining locations have been staked in good faith and in accordance with state and federal mining law; and hundreds of thousands of dollars have been expended for the exploration and development of the mines.

No objection has been, nor is now, raised by the holders of the oil and gas leases to the claims and operations of the uranium miners. Although carnotite uranium ore and oil and gas probably exist in the same area, still the deposits of each are lying, undoubtedly, at widely separated stratigraphic levels. There accordingly seems to be no reason why the same land area cannot be operated and utilized simultaneously for the production of oil and gas, as well as for uranium. For this reason the oil and gas lessees have not opposed the exploration of their leaseholds by the uranium miners, nor have they contested the validity of the claims staked by the miners. The primary interest of such leaseholders remains that their rights under the respective oil and gas leases be not abridged or impaired.

MULTIPLE SIMULTANEOUS UTILIZATION

The problem of multiple simultaneous utilization of land and mineral resources of the country is one which has historically received detailed and close legislative and judicial attention. In our early history as a nation of tremendous land resources and small population the problem was essentially that of determining which of the utilizations of particular land was best for our economic welfare. With much more land on hand than there were people to develop it, governing bodies tacitly assumed that one parcel of land should be used by one person for a specific purpose and that any such use would be exclusive. It was also considered that the mining of minerals from the earth was generally more important than agricultural development.

By a very early act of Congress, lands which were known to be mineral lands were excluded from homestead entry and could only be acquired under the mining laws.[3] As population continued to increase and as more and more of the public domain became appropriated, the problem of simultaenous utilization became more apparent, and a policy, recognized by courts, as well as by legislatures, of encouraging simultaneous utilization began to develop. The concept that one use of land must needs be exclusive of all others began to be discarded.

An example of this policy can be seen in the Act of 1930 whereby Congress authorized the Secretary of Interior to lease for oil and gas lands under rights of way of railroads acquired under any law of the United States.[4] Another example is found in the Stock Raising Homestead Act in which coal and mineral rights are reserved by the government and remain subject to dis-

[3] 30 U.S.C.A. 201, Colorado Coal & Iron Co. v. U. S. (Colo. 1887) 8 S. Ct. 131, 123 U. S. 307, 31 L. ed. 182.

[4] 46 Stat. 373, 30 U.S.C.A. 301-306.

posal under the Mineral Leasing Act or the general mining laws depending upon the type of mineral.[5]

A final specific example of this policy can be seen from the inclusion by Congress of a provision in the Potash Leasing Act providing that the granting of a potash lease on ground where minerals subject to disposition under the general mining laws are found to exist shall not prevent such minerals from being obtained under such general mining laws.[6]

This policy of multiple non-conflicting utilization of natural resources has also had an influence on administrative determination. Among the Leasing and Operating Regulations governing Federal and Indian Lands appears a regulation entitled "Multiple Development or Other Disposition of Land" which provides:

> The granting of a permit or lease for the prospecting, development or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations or selections of the leased lands with a reservation of the mineral deposits to the United States.[7]

The Courts, from very early times, have often attempted to construe legislation in such manner as to encourage rather than hamper non-conflicting utilization of public land resources. In *O'Keiffe v. Cunningham,*[8] the Court decided that one party might locate the same ground for fluming purposes and another party, at the same or a different time, might locate for mining purposes. It was specifically stated that the two locations, being for different purpose, would not conflict.

The early California case of *Clark v. Duval*[9] established in 1860 that miners have the right to go upon public lands held by others under the Possessory Act for agriculture purposes and that the miners could use the land and water so far as reasonably necessary for the business of mining, so long as they maintained a just regard to the rights of the agriculturist.

Even where simultaneous use would result in a degree of conflict between the two users, providing the two uses were not mutually exclusive, ways have been found to allow such simultaneous operation. In the case of *McMullin v. Magnuson,*[10] the Colorado Supreme Court said, in construing the Stock Raising Homestead Act of 1916:

> It is evident the Statute contemplates that a person qualified to locate mineral deposits may at all times enter the homestead to prospect for mineral therein, and, as a

[5] 43 U.S.C.A. 299.
[6] 30 U.S.C.A. 284.
[7] 43 Code of Fed. Regs. sec. 1917.
[8] O'Keiffe v. Cunningham, 9 Cal. 589.
[9] Clark v. Duval, 15 Cal. 85.
[10] McMullin v. Magnuson, 102 Colo. 230, 78 P. 2d. 964.

> necessary incident to this right, locate under the appropriate act such mineral as he may discover, subject only to his liability to the homestead entryman or patentee for damages to crops and the prohibition against injury to permanent improvements. . . . Further, the clear purpose of the Statute is not to restrict prospecting and mining operations on lands entered or patented under the Stock Raising Act, but to assure compensatory protection to the homesteader.

Thus where the United States has parted with title to surface rights but reserved mineral rights, subject to disposition under the mining laws, the Courts have construed the government's purpose as one of encouragement toward mining development, consistent with protecting the rights of the surface rights owner.

BASIS OF PRESENT CONTROVERSY

The decisions of the General Land Office which lie at the bottom of the present controversy, however, do not seem to follow this long continued and often re-affirmed policy. The first of these decisions was the case of *Joseph E. McClory, et al.*,[11] which was decided August 22, 1924. In this case it appears that a Federal Oil and Gas Prospecting Permit was issued in 1920 to one C. L. Seckett. Thereafter, in the year 1921, Joseph E. McClory, who was drilling a test well on the premises for Sackett, struck a placer deposit of gold. McClory thereupon staked a placer claim on the ground and in 1923 filed a mineral application for patent. In this application he specifically requested and consented:

> . . . to accept title to said mining claim with the reservation and subject to the right of any permittee under any permit which has been or may be granted where the right of such permittee was initiated prior to the location of said placer mining claim, and also subject to the right of any lessee having a prior right under any lease of the land which has been or may be granted, to use so much of the surface of the land as is or may be necessary in prospecting for, mining and removing oil and gas contents and deposits therefrom without compensation for such use and in accordance with Section 29 of the Leasing Act of February 25, 1920.[12]

The office of the Secretary of Interior, in analyzing the nature of the problem presented by such application said:

> It is necessary to inquire whether or not the granting of an oil and gas permit upon certain lands and the deposits named in the act is such a mode of disposition thereof, as to preclude or suspend, while the permit is in force, the appropriation of the land in the permit area for metalliferous minerals under the United States min-

[11] Joseph E. McClory et. al., 50 L. D. 623.
[12] *Ibid* p. 624.

> ing laws. Sec. 13 of the Leasing Act under conditions specified therein, gives the exclusive right, for a period of two years, to prospect for oil or gas upon lands containing the deposits named in the act. . . . The permit issued under this section stipulates that it is granted for no other purposes than to prospect for oil or gas. The oil and gas permittee has no general or exclusive right to the use of surface for any purpose, but only the right to the use of so much of the surface as will enable the permittee to carry on without hindrance his oil and gas prospecting operations in accordance with the terms of the permit. The leasing act and the permit issued thereunder provide for the joint and contemporaneous use of the land of claimants of other deposits named in the act, and the provisions of the stock-raising homestead law of December 29, 1916, and the complementary provisions of the Act of July 17, 1914 (38 Stat., 509), and those in the leasing Acts—provide under the conditions and reservations therein specified for the disposal of the title to agricultural entrymen. The grounds for rejecting an entry under the mineral land laws can not therefore be based upon any exclusive right of the oil and gas permittee to the possession of the surface. . . .[13]

The Secretary continues by pointing out that the granting of a permit for oil and gas creates an inchoate right under certain conditions to obtain a lease for the production of oil and gas, and draws the following conclusion:

> It follows, therefore, that no other person should be permitted, nor are they entitled, to initiate under other laws, rights which would by the provisions of such laws mature into a title without a reservation of the oil and gas deposits. 'The patent of a placer mining claim carries with it the title to the surface included within the lines of the mining location, as well as to the lands beneath the surface.' *Deffeback v. Hawke* (115 U. S. 392, 406). Based upon the provisions of Sec. 2333 of the Revised Statutes, there is a well recognized exception to this rule in the doctrines relating to known conflicting lode claims existing at the date of the application for patent. . . . The Department, however, is not aware of any other exception.[14]

Thus the Department of Interior held that should a patent be granted for the mining claim it would necessarily extinguish the permittee's rights.

As a result, the decision asserted that the department was powerless to issue a patent containing a reservation protecting the outstanding interest. The opinion stated that since there was

[13] *Ibid* p. 625.
[14] *Ibid* p. 626.

no provision in the law for such procedure and since the office was a statutory agent of the government, it could not act in the matter in the absence of specific legislative authority.

The decision concluded:

> Inasmuch as a mineral patent, without an oil and gas reservation, would carry the title to the oil and gas contained in the land so conveyed and would thus defeat the permittee's inchoate rights to such oil and gas, and as there is no warrant of law for the insertion of such a reservation in the mineral patent, the commissioner's decision must be, and is hereby, affirmed. *While the effect of this decision seems to bar the exploration and purchase under the mineral land laws of metalliferous minerals contained in lands covered by a subsisting permit in good standing, yet the Department is without power in the absence of appropriate legislation to hold otherwise.*[15]

It is readily seen from the last sentence that the Secretary's Office realized the gravity and far-reaching consequences that might result from the decision. It is also significant that the department itself apparently did not believe that such a decision was conducive to sound public policy. Finally, it is important to notice that the opinion indicated that legislative clarification was the means of resolving the problem.

In the case of *Filtrol v. Brittan and Echart,*[16] however, it appears that the Department of the Interior had become even more persuaded of its position. In even stronger language it denied the validity of a mining claim staked on an existing oil and gas leasehold.

The case is particularly interesting because it not only involves a conflict between a mining claim and oil permit but also a conflict between a mining claim and a stock raising homestead entry. In this case the locator of mining claims, which had been staked on ground covered by a previous oil and gas permit, contested the granting of a time extension on the oil and gas permit.

The office of the Secretary of Interior handed down a decision denying that a miner had the legal standing to maintain the contest. The assistant Secretary of Interior stated:

> In *Manuel v. Wulff* (152 U. S. 505), the Supreme Court of the United States said (p. 510):
>
> 'And by section 2322 (of the Revised Statutes) it is provided that when such qualified persons have made discovery of mineral lands and complied with the law, they shall have the exclusive right to possession and enjoyment of the same. It has, therefore, been repeatedly held that mining claims are property in the fullest sense of the word, and may be sold, transferred, mortgaged, and

[15] *Ibid* p. 626.

[16] Filtrol v. Brittan and Echart, 51 L.D. 649.

> inherited without infringing the title of the United States, and that when a location is perfected it has the effect of a grant by the United States of the right of present and exclusive possession. *Forbes v. Gracey,* 94 U. S. 762; *Belk v. Meagher,* 104 U. S. 279; *Gwillim v. Donnellan,* 115 U. S. 45; *Noyes v. Mantle,* 127 U. S. 348.'
>
> It is clear from consideration of the statutes and decisions in which they have been construed that a mining claim can not be located on land embraced in an oil and gas prospecting permit. In this connection see also *Joseph E. McClory et al* (50 L. D. 623) and the opinion of this Department dated October 9, 1924 (50 L. D. 650).
>
> The Department has ruled (48 L. D. 98, 99) that . . . qualified persons who filed proper applications for oil or gas prospecting permits under the act of February 25, 1920, can not and should not be deprived of their rights if, because of delay in action upon the applications so filed, there intervenes a designation by this Department of the lands as being within the geological structure of a producing oil or gas field occasioned by a discovery of oil or gas subsequent to the filing of the application in the local land office.
>
> Under the rulings of the Department the filing of an allowable oil and gas prospecting permit application has a segregative effect and the applicant has priority of right over any adverse interest thereafter sought to be initiated. When a permit is issued upon such application, the permittee's rights date back to the filing of his application. Hence, the alleged mining locations within the area for which Brittan had applied for a permit and for which he was later granted a permit were without legal effect, and being so from the beginning they have not since become valid as against a surface entry.[17]

In the case it further appears that part of the mining claims had been staked on ground entered under the Stock Raising Homestead Act. In considering the effect of these claims the Land Office declared:

> There remains to be considered the protest of the Filtrol Company against Echart's homestead entry to the extent of conflict with mining locations outside of the permit area. It has hereinbefore been stated that when mining locations were made on the W½ NE¼ NW¼ and NW¼ NW¼, Sec. 34, said tracts were embraced in the stockraising homestead entry of Jean P. Giraud. Consequently, the locations were made for the mineral deposits as distinguished from the land and minerals. In section

[17] *Ibid* p. 651.

> 9 of the Stock Raising Homestead Act of December 29, 1916, supra, it is provided . . .
>
> That all patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notations declaring them to be subject to the provisions of this act with reference to the disposition, occupancy, and use of the land as permitted to any entryman under this act.
>
> It is clear that the title of a mineral claimant evidenced by such a patent would not automatically be enlarged to include land and minerals if the cause of the restricted title were an unperfected entry which should be canceled. And the Department does not hold the opinion that the rights of a mineral claimant who has located a mining claim for mineral deposits in land covered by a stock-raising homestead entry are automatically enlarged to include the land upon cancellation of the entry. This does not involve the denial of any rights to the mineral claimant, because if he should amend his location prior to the assertion of any new right under the Stock Raising Act, he would be in a position to obtain patent for the land, including the minerals.[18]

The Secretary of Interior, therefore, reaffirmed his decision that a mining claim could not be located on ground covered by an oil and gas permit for the reason that the Department held that the mining claim entitled the owner to "exclusive possession." The mining entry on the oil and gas lease areas was treated as necessarily being "for land and mineral." Thus the claim would be bound to exclude the rights of the leaseholder to any use of the land.

In the case of a mining location on the homestead, however, the Department treated such entry as being only "for the mineral deposits." The reason for the distinction apparently goes back to the fact that there is no way for a mineral patent to contain a reservation for the protection of the estate of an oil and gas leaseholder. On the other hand, the Stock Raising Homestead Act contains specific provisions for the issuance of mineral patents containing "appropriate notations declaring them to be subject to the provisions of this act with reference to the disposition, occupancy and use of the land as permitted to any entryman under this act."

The essence of the reasoning of the Department in regard to this controversy can be found in the opinion furnished to the Hon. Charles L. Richards, House of Representatives, in response to a request from the congressman for information as to the manner of disposition of lands "valuable for saline salts, borax, potash, etc., which also contain gold values." [19] It appears from the opin-

[18] *Ibid* p. 652.
[19] 50 L. D. 650.

ion that the specific information requested concerned gold claims on land containing potassium. In its opinion the Department pointed out that certain of the minerals enumerated by the Minerals Leasing Acts, are subject to disposition only in manner provided in such acts, i.e., by lease and permit systems. The office of the Secretary of the Interior continues that prior to the enactment of the Leasing Acts, the deposits of the listed minerals were subject to location under the general mining laws. The Department then expressed the opinion that lands having known deposits of any of the listed minerals could not be located for metalliferous mineral deposits and discussed its prior decision in the McClory case. The opinion said:

> Although the decision in the McClory case went only to the question of patentability of the assorted location there involved, the principles upon which that decision is based would apply with equal force to the question as to the locatability under the mining laws, on account of a metalliferous mineral deposit, after passage of the act of 1917, of lands known to be valuable for deposits of potassium, . . . On the other hand, it is in substance provided . . . in the mining laws, that the locators of mining locations, their heirs, and assigns, on lands subject to such location, and with respect to which locations the requirements of the mining laws have been complied with, shall, all else being regular, be entitled to the exclusive right of possession of, and an unrestricted patent to, the land so located. Clearly, therefore, there can be no room for the contemporaneous operation of both the mining laws and one or the other of the leasing acts with respect to the same lands, if known at the time a mining location is sought to be made thereof after the passage of the applicable leasing act, to be valuable on account of any of the minerals named in the acts, and the Department would be constrained to hold that as to such lands, even if containing metalliferous mineral deposits, the mining laws have been repealed by the later leasing act. While the effect of this conclusion would be to bar the patenting of lands such as those here under discussion, under the mining laws, the situation is one that in the opinion of the Department can be remedied only through legislation by Congress.[20]

It therefore appears that the drilling contractor who happened to hit a placer deposit of gold while wildcatting for oil, and tried to secure a patent on such placer with protection for the leaseholder, had innocently caused the birth of a concept of administrative law with tremendous consequences to the mining profession.

The legal soundness of the reasoning behind this concept

[20] *Ibid* p. 651.

might well be questioned. It could be argued that the granting of a lease for a particular purpose conveys merely a limited estate to the oil and gas permittee.[21] The remainder and all residual rights remain in the grantor, i.e., the sovereign.[22] Such rights would include, of course, all minerals other than the specific minerals designated in the lease and the implied right to remove the other minerals without interference with the lessee's rights.[23] These rights not having been granted, but remaining in the sovereign, it might well be argued that they could be enjoyed and located, at least as to the minerals as distinguished from "land and minerals," by a miner operating under the general authority and license granted by the mining laws of 1866 and 1872.[24]

Even if it were true that a mineral patent could not be issued containing a reservation protecting an outstanding interest, it is hard to see why such fact, prior to application for patent, would invalidate or prevent the operation of a mining location which did not conflict with nor hamper the interest outstanding. In addition, however, there is authority in the law for the insertion of a reservation in a grant even though no specific legislative authority for such insertion exists.[25]

It might be that a court would not sustain the conclusion of the land decision. In commenting upon these decisions, many years ago, one of America's foremost authorities on mining law said:

> The Opinion approves the case of Joseph E. McClory 50 L. C. 623, where entry of a gold placer was rejected on the ground that its location was made while an oil and gas permit was in force under the general Leasing Act. The reasoning in the case was practically the same as in the opinion approving it. Whatever may be said about the conclusion as to a gold placer we can see no justice or reason for applying the same reasoning to a metalliferous lode location.[26]

---

[21] See 1 Summers Oil and Gas Sec. 153 and the detailed analysis therein contained of the various ways in which courts have treated the interest of the lessee created by an oil and gas lease. Regardless of whether this interest is treated as a mere license, a profit *a prendre*, a servitude, an incorporeal heredidament or a fee interest in the land, all are limited rights remaining in the grantor. See also C.I.R. v. Crawford, C.C.A. 9, 148 F. 2d 776, affirmed 66 S. Ct. 409, 326 U.S. 599, 90 L. ed. 343.

[22] C.I.R. v. Crawford, C.C.A. 9, *Supra*, 58 C.J.S. 160, T. W. Phillips Gas & Oil Co. v. Manor Gas Coal Co., 68 Pa Super. 372.

[23] 58 C.J.S. 201 (f); Reynolds v. McMan Oil & Gas Co., Tex. Com. App., 11 S.W. 2d 778, Shell Petroleum Corp. v. Liberty Gravel & Sand Co., Tex. Civ. App., 128 S.W. 2d 471, 58 C.J.S. 178 (a); Praeletorian Diamond Oil Ass'n. v. Garvey, Tex. Civ. App., 15 S.W. 2d 698.

[24] Prior Act of 1866, 14 Stat. 251, and act of 1872, 17 Stat. 91, now incorporated in 30 U.S.C.A. 22.

[25] Terry v. Midwest Refining Co., (CCA. N. M.) 64 F. 2d 428, cert. denied Terry v. Midland Refining Co., 54 S. Ct. 74, 290 U.S. 660, 78 L. ed. 571.

[26] Morrison's Mining Rights, 16th Ed. p. 275.

It is interesting to note that Morrison went on to say, "However, the ultimate construction of that law must be by the courts and not by the Department." [27]

The fact remains, as indicated in the first decision and in the Opinion, that legislative clarification would be the proper remedy of this situation. It is believed that a truer guide to legislative intent and policy could be achieved by amendment by act of Congress to the Minerals Leasing Act of 1920, than could be achieved by prolonged and costly litigation.

It is interesting to note, also, that a precedent already exists for such an amendment. As said before, the above cases were decided in 1924 asd 1926 respectively, and Congressman Richards had secured an opinion from the Department concerning the validity of gold claims on potash ground in 1924. In 1927, an Amendment to the Potash Leasing Act was enacted which provided as follows:

> Prospecting permits or leases may be issued under the provisions of section 281-285 of this title for deposits of potassium in public lands, also containing deposits of coal or other minerals, on condition that such other deposits be reserved to the United States for disposal under appropriate laws: Provided, that if the interests of the Government and of the leases will be subserved thereby potassium leases may include covenants providing for the development by the leases of chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium, magnesium, aluminum, or calcium, associated with the potassium deposits leased, on terms and conditions not inconsistent with the sodium provisions of sections 261 and 263 of this title: *Provided further, that where valuable deposits of mineral now subject to disposition under the general mining laws are found in fissure veins on any of the lands subject to permit or lease under sections 281-285 of this title the valuable minerals so found shall continue subject to disposition under the said general mining laws notwithstanding the presence of potash therein.* Feb. 7, 1927, c. 66 No. 4, 44 Stat. 1058.[28]

Probably Congress should have gone one step further and incorporated a provision in the foregoing section similar to the quoted part of the Livestock Raising Homestead Act to provide for authority for the insertion of a reservation in favor of the potash leaseholder in case of a mineral application for a patent. Nevertheless the Potash Act, passed the year after the Land Office decisions stand as an indication of congressional intent.

It is submitted that an amendment to the Oil and Gas Leasing Act should be enacted to allow disposition of minerals under

[27] *Ibid* p. 275.
[28] 30 U.S.C.A. 284.

the general mining laws notwithstanding the existence of an oil and gas lease and provision should be made to protect the interest of the oil and gas leaseholder by suitable reservation in case of an application for mineral patent. In addition, the effect of such amendment should be made retroactive so that it would validate claims involved in the present controversy. It is believed that such retroactive effect would not be legally objectionable since it would not deprive the oil and gas leaseholders of any rights granted to them by their oil and gas leases. As stated before, the granting of an oil and gas lease is a specific grant of a limited estate, i.e., the right to prospect for and remove *oil and gas* upon stated conditions. A recognition of the validity of locations made under the mining laws, as long as such locations do not abridge or impair rights granted by the prior lease would deprive no one of property rights. In fact, it is believed that the holders of oil and gas leases would join with the miners in support of such legislation.

CLARIFICATION OF RESERVATION IN A.E.C. ACT

There is, however, another matter which should be given consideration in completely resolving this problem. A shadow of doubt and uncertainty is cast upon the validity of uranium claims located in oil and gas leaseholds granted subsequent to 1946 by the wording in one of the sections of the Atomic Energy Act itself. Subsection Seven of the Article entitled *Source Materials* provides, first, that:

> All uranium, thorium, and all other materials determined pursuant to paragraph (1) of this subsection to be peculiarly essential to the production of fissionable material, contained in whatever concentration, in deposits in the public lands are reserved for the use of the United States subject to valid claims, rights, or privileges existing on August 1, 1946.

This subsection provided, second, that:

> The Secretary of the Interior shall cause to be inserted in every patent, conveyance, lease, permit, or other authorization granted after August 1, 1946, to use the public lands on their mineral resources, under any of which there might result the extraction of any materials so reserved, a reservation to the United States of all such materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representative at any time to enter upon the lands and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby.[29]

For a while after the passage of the Atomic Energy Act,

[29] 42 U.S.C.A. 1805 (b) 7.

there was doubt whether, in view of the first part of the above subsection, any public domain was open for location for uranium under the general mining laws. It was, however, determined by the A.E.C. and the Department of the Interior that the reservation of all fissionable source materials under the public domain for the "use of the United States" did not prohibit the staking of a valid claim as a result of the discovery of uranium under the mining laws, and a program of encouragement of private exploration, location and development by miners was adopted and has been followed by the Atomic Energy Commission. *Prospecting for Uranium*, Revised 1951, p. 52, prepared and published by U.S.A.E.C. and U.S.G.S.[30]

The question then arises whether the granting of a lease containing such a reservation of fissionable source minerals to the United States, "together with the right of the United States through its authorized agents or representatives at any time to enter upon the lands and prospect for, mine, and remove the same," amounts to a withdrawal of the lands covered from exploration and location by individuals under the general mining laws. In its terms the reservation seems to be an exclusive right, reserved only to authorized agents of the United States, and unless the license granted miners to explore and locate the public domain under the laws 1866 and 1872 can be considered as authorizing individual miners to exercise the rights reserved by the U. S., the section would amount to a withdrawal.

It is believed, however, that it was not the intent of Congress that the granting of an oil and gas lease with such reservation should effect a withdrawal by implication. First of all, the President has the power to withdraw lands from location by specific act. Such power has already been exercised on a number of occasions. The reason for withdrawing land has been to allow the A.E.C. to explore by diamond drilling and geological survey areas which are potentially productive but which are not being explored by private endeavor. To hold that the granting of an oil and gas lease withdraws an area from private exploration regardless of whether the area is being explored and developed by private initiative would run directly counter to the policy of withdrawal.

Whether an oil and gas lease covers an area or not, the government has *specific* power to withdraw an area from further private appropriation should it be deemed necessary or advisable.[31] It is submitted that a clarifying amendment should be passed by Congress, providing in Sec. 1805(b) (7) that the reservation contained in instruments was not intended by Congress to prevent

[30] *Prospecting for Uranium*, Revised Ed. Published 1951, by United States Atomic Energy Commission and United States Geological Survey, p. 52.

[31] The withdrawal orders of the President affecting uranium lands have recited the authority as: "the authority vested in me as President of the United States, and in further effectuation of the policies declared by Section 1 of the Atomic Energy Act of 1946, (60 Stat. 755)". See also 30 U.S.C.A. 1801 *et seq.*

exploration and location under the mining laws in any areas not specifically withdrawn by withdrawal order.

MEANS OF SOLUTION*

Representatives of the Washington office of the Raw Materials Division of the A.E.C. have stated that they are cognizant of the inequities created by the controversy over claims in oil and gas areas. They have stated that they are looking for a method by which claims staked in good faith in such areas can be validated. As regards claims staked on leases issued after passage of the Atomic Energy Act, there probably is an administrative solution. Acting under the provisions of the Regulation of the Department of Interior concerning multiple simultaneous use of land,[32] the A.E.C., it is believed, could issue "permits," authorizing locators to operate their claims as "authorized agents" of the United States.

Such a solution, however, would be scant protection to such miners. There being no statutory law concerning the terms of such permits to which a miner might look to ascertain his rights, his entire operation would apparently be at the sufference of the administrative discretion of the Atomic Energy Commission officials, both as to operating conditions and as to tenure. In the absence of statutory definition, the duration of such permit would undoubtedly be a matter of discretion. Such a solution would place miners who had located on oil and gas areas at a tremendous disadvantage compared to miners who happened to locate claims in areas not covered by such leases. The large companies who have claims originally staked for vanadium would be relatively less hampered because many of their claims pre-date oil and gas leases. Instead of encouraging new companies to enter the field such a solution would act as a deterent to new companies and miners by adding yet another uncertain hazard to a business filled with uncertainty and hazard. Unless an administrative way can be found for a reversal of the opinion and the two prior decisions of the Secretary of Interior's office and a clear validation of the claims by virtue of the *compliance of the locators with the general mining laws* as distinguished from a validating permit or license being granted, it is believed that legislation is the proper remedy.

Strangely, this is a controversy without opposing, conflicting interests. It is a matter which has largely grown out of a decision reluctantly rendered by the Land Office in its interpretation of existing statutes. The decision, itself, points to the need for legislative clarification. Also, concerning clarification of the reservation required by subsection 7 of the Atomic Energy Act, the Congress recognized that with the enactment of this act it was embarking upon uncharted waters into a new field. The act itself states, that the field being one in which unknown factors are involved. "Therefore, any legislation will necessarily be subject to revision from time to time." [33]

*See Author's Note at end of article.

[32] 43 Code of Fed Regs. Sec. 191.7.

[33] 42 U.S.C.A. 1801.

PUBLIC POLICY IN A.E.C. RAW MATERIALS PROCUREMENT

It is recognized that the Atomic Energy program is of such vital importance to our national security and well being, that the United States government must continue to exercise a paramount power of control and supervision over the entire program. Under the Atomic Energy Act, however, the government does possess such paramount powers. In regard to the raw materials phase of the program, all uranium and other source material is reserved for the use of the United States;[34] the sale of all ores are thereby controlled; the price to be paid for the ore is set by the government; the United States has the right under the act to withdraw any of the unappropriated public domain from further location; and finally as to claims already staked and whether patented or not, the Commission has the power and authority to purchase, take, requisition, condemn, or otherwise acquire, supplies of source materials or any interest in real property containing deposits of source materials to the extent deemed necessary to effectuate the purposes of the Atomic Energy Act.[35]

Thus by express authority, the Atomic Energy Commission has been granted the powers necessary over such a vital program as atomic energy development. Still there is a wide area in which private initiative and endeavor can play its important role. One of the declared policies of the Atomic Energy Act is the "strengthening of free competition in private enterprise." [36] The grant powers given by Congress to the A.E.C. were not meant to create an exclusive government business of the mining of uranium but rather to give the commission the power in the case of failure of private endeavor to step in and exercise its paramount control.

The publication prepared and published by the United States Atomic Energy Commission and the United States Geological Survey entitled "Prospecting for Uranium" issued to encourage private exploration and mining of uranium in discussing the role of the Government and its reserved powers in the program, states:

> Because of the provisions of the Atomic Energy Act, the Government keeps certain rights in uranium or thorium ores located on public lands after August 1, 1946. The most important of these is the right of the Atomic Energy Commission to enter on the land subject to the location and remove this uranium or thorium ore. If this right of entry is used, the Commission is required by law to compensate the locator for the damage or inquiry caused by its action, although not for the uranium or thorium which is removed.
>
> * * * This right of the Commission to enter and remove ores which contain uranium or thorium protects the Government from, among other things, a claimholder's refusal to work a deposit.

---

[34] 42 U.S.C.A. 1805 (b) (7).
[35] 42 U.S.C.A. 1805 (b) 5.
[36] 42 U.S.C.A. 1801 (a).

> Under the provisions of the Atomic Energy Act, the Atomic Energy Commission may also, if it considers it necessary, require the delivery to the commission of uranium or thorium, located on public lands after August 1, 1946, after the metal has been mined and separated. If the Commission exercises this power, it must pay the reasonable value of their services, including a profit, to these persons found by the Commission to have performed services in the discovery, mining and extraction of the metal. It does not have to pay for the uranium or thorium.
>
> Up to the present time, the Commission has not thought it desirable or necessary to exercise either of these rights, and *it will not be the policy of the Commission to exercise them except in case of emergency where no other course of action is practicable. It is not expected that such an occasion is likely to arise.*[37]

The pressing urgency of the controversy which has arisen concerning the title to uranium claims included within prior oil and gas lease areas can be judged by two immediate effects which it has already occasioned. The Atomic Energy Commission has refused to make bonus payments for production from claims covered by prior leases, and the Defense Minerals Exploration Authority has refused to grant loans for the exploration and development of properties in such lease areas until this controversy has been resolved. Thus, two instrumentalities of the Federal Government charged with the duty and responsibility of assisting and encouraging the development of strategic mineral resources have felt the cloud upon the validity of these mining locations to be sufficiently serious to cause suspension of further action on their part. In many cases in oil lease areas it has brought further private development and production to a virtual standstill. Pending resolution of this matter, the possessory rights of the miners under applicable mining laws and the efforts and money expended in staking claims in these areas stands in jeopardy. It is respectfully submitted that this is a problem which should receive immediate attention.

AUTHOR'S NOTE

Since this article was written the Atomic Energy Commission has issued a press release dated December 1, 1952, stating:

> Solution of the problem of assuring uranium miners the right to mine deposits in public land areas covered by Federal oil and gas leases was announced today * * *. Under a lease agreement worked out after consultation with the U. S. Department of the Interior, uranium miners will be able to proceed with no substantial change in

[37] *Prospecting for Uranium Supra.*

the conduct of their mining operations. U.S.A.E.C. Press Release No. 459, December 1, 1952.

As expected the means of administrative solution as discussed in the article has been adopted, except that the validating instrument to be executed is a "lease" rather than a "permit".

It is submitted that all of the arguments advanced in the article apply with the same force to lease validation as they would to permit validation. In addition the lease contains a provision that:

> The term of this agreement shall expire, at the option of the Commission, upon failure of the Lessee to comply with any of the obligations in this lease within ninety (90) days after the receipt of a notice from the Commission specifying such failure and requesting compliance. U.S.A.E.C. Mining Lease No. A T (05-1)—OG.

It is evident, of course, that the act of accepting the lease would be an acquiescence in an act of dominion over the mining claims by the A.E.C. Because of this objection, Section 8 has been placed in the lease, which provides:

> The Lessee does not waive any right to which he would otherwise be entitled because of the passage of subsequent legislation by entering into this agreement.

It is submitted that the A.E.C. has made, within the extent of their administrative authority, a bona fide effort to provide administrative relief until this problem can be finally settled. It is believed however that the wording of Section 8 should be made broad enough to furnish protection in the event that the decisions of the Interior Department should be overruled by judicial determination as well as by legislation. This end, it is believed, could be achieved by the insertion of the following provision immediately after Section 8 aforesaid:

> * * * nor shall anything herein contained be construed as an abandonment or relinquishment of any rights acquired by lessee in and to the within described mining claims by virtue of discovery and location under provision of the General Mining Laws.

As clarified, it is believed, that the said lease will furnish stop-gap relief until this matter can be finally resolved by legislation as suggested in the article.

BOOK TRADERS CORNER

Attorney Hatfield Chilson of Loveland offers for sale at a very reasonable price a complete set of the Pacific Reporter and Pacific Second and a complete set of the Pacific Second Digest. He also offers an incomplete set of Digests for the first set of the Pacific Reporter.

The Denver District Court and a number of lawyers need the Colorado Reports and Colorado Appeals. Because of this acute need, the Secretary of the Colorado Bar Association would like to know of any complete sets or individual volumes which may be available for sale.

APPROVED LAW LISTS

The following publishers of law lists and legal directories have received certificates of compliance from the Standing Committee on Law Lists of the American Bar Association for their 1953 editions.

COMMERCIAL LAW LISTS

A. C. A. List
Associated Commercial Attorneys
List, 165 Broadway
New York 6, New York

American Lawyers Quarterly
The American Lawyers Company
1712 N.B.C. Building
Cleveland 14, Ohio

B. A. Law List
The B. A. Law List Company
161 West Wisconsin Avenue
Milwaukee 3, Wisconsin

Clearing House Quarterly
Attorneys Nat'l Clearing House Co.
1645 Hennepin Avenue
Minneapolis 3, Minnesota

The Columbia List
The Columbia Directory Co., Inc.
320 Broadway
New York 7, New York

The Commercial Bar
The Commercial Bar, Inc.
521 Fifth Avenue
New York 17, New York

C-R-C Attorney Directory
The C-R-C- Law List Company, Inc.
50 Church Street
New York 7, New York

Fowarders List of Attorneys
Forwarders List Company
38 South Dearborn Street
Chicago 3, Illinois

The General Bar
The General Bar, Inc.
36 West 44th Street
New York 18, New York

International Lawyers Law List
International Lawyers Co., Inc.
33 West 42nd Street
New York 18, New York

The National List
The National List, Inc.
75 West Street
New York 6, New York

Rand McNally List of Bank recommended Attorneys
Rand McNally & Company
536 South Clark Street
Chicago 5, Illinois

Wright-Holmes Law List
Wright-Holmes Corporation
225 West 34th Street
New York 1, New York

GENERAL LEGAL DIRECTORY

Martindale-Hubbell Law Directory
Martindale-Hubbell, Inc.
One Prospect Street
Summit 1, New Jersey

GENERAL LAW LISTS

American Bank Attorneys
American Bank Attorneys
18 Brattle Street
Cambridge 38, Massachusetts

The American Bar
The James C. Fifield Company
121 West Franklin
Minneapolis 4, Minnesota

The Bar Register
The Bar Register Company, Inc.
One Prospect Street
Summit 1, New Jersey

Campbell's List
Campbell's List, Inc.
905 Orange Avenue
Winter Park, Florida

International Trial Lawyers
Central Guarantee Company, Inc.
141 West Jackson Boulevard
Chicago 4, Illinois

The Lawyers Directory
The Lawyer's Directory, Inc.
1204 Traction Building
Cincinnati 2, Ohio

The Lawyer's List
Law List Publishing Company
111 Fifth Avenue
New York 3, New York

Russell Law List
Russell Law List
10 East 40th Street
New York 16, New York

INSURANCE LAW LISTS

Best's Recommended Insurance Att'ys
Alfred M. Best Company, Inc.
75 Fulton Street
New York 7, New York

Hine's Insurance Counsel
Hine's Legal Directory, Inc .
38 South Dearborn Street
Chicago 3, Illinois

The Insurance Bar
The Bar List Publishing Company
State Bank Building
Evanston, Illinois

The Underwriters List
Underwriters List Publishing Co.
308 East Eighth Street
Cincinnati 2, Ohio

PROBATE LAW LISTS

Recommended Probate Counsel
Central Guarantee Company, Inc.
141 West Jackson Boulevard
Chicago 4, Illinois

Sullivan's Probate Directory
Sullivan's Probate Directory, Inc.
84 Cherry Street
Galesburg, Illinois

STATE LEGAL DIRECTORIES

The following state legal directories published by The Legal Directories Publishing Company
1072 Gayley Avenue
Los Angeles 24, California

Delaware-Maryland-New Jersey Legal Directory
Florida-Georgia Legal Directory
Illinois Legal Directory
Indiana Legal Directory
Iowa Legal Directory
Kansas Legal Directory
Kentucky-Tennessee Legal Directory
Missouri Legal Directory
Mountain States Legal Directory (for the States of Colorado, Idaho, Montana, New Mexico, Utah and Wyoming)
Ohio Legal Directory
Oklahoma Legal Directory
Pacific Coast Legal Directory (for the States of Arizona, California, Nevada, Oregon and Washington)
Pennsylvania Legal Directory
Texas Legal Directory
Wisconsin Legal Directory

FOREIGN LAW LISTS

Canadian Credit Men's Commercial Law and Legal Directory
Canadian Credit Men's Trust Association, Ltd.
519 McIntyre Block
Winnipeg, Manitoba, Canada

Canadian Law List
Cartwright & Sons, Ltd.
24 Adelaide Street, East
Toronto, Ontaria, Canada

Empire Law List
Butterworth & Co. (Publishers) Ltd.
4, 5 & 6 Bell Yard, Temple Bar
London, W. C. 2, England

The International Law List
L. Corper-Mordaunt & Company
Pitman House
Parker Street
London, W. C. 2, England

Kime's International Law Directory
Kime's International Law Directory, Ltd.
4 New Zealand Avenue
London, E. C. 1, England

BAR SPONSORED RADIO PROGRAMS

For the fourth consecutive year a series of thirteen 15-minute radio programs prepared under the direction of the Radio and Television Committee of the Colorado Bar Association by the Rocky Mountain Radio Council of Denver will be presented as a public service by the radio stations listed below.

These programs will be presented at weekly intervals starting with the time and date indicated. The radio stations have reserved the right to change the time of presentation where necessary.

KGIW	Alamosa	Thursday, 4:30 P.M.	Feb. 19
KBOL	Boulder	Tuesday, 7:30 P.M.	Feb. 17
KRDO	Colorado Springs	Sunday, 6:15 P.M.	Feb. 15
KLZ	Denver	Tuesday, 9:45 P.M.	Feb. 17
KGLN	Glenwood Springs	Tuesday, 8:30 P.M.	Feb. 17
KFXJ	Grand Junction	Saturday, 5:15 P.M.	Feb. 21
KYOU	Greeley	Thursday, 7:30 P.M.	Feb. 19
KLMR	Lamar	Thursday, 6:45 P.M.	Feb. 19
KGHF	Pueblo	Thursday, 9:15 P.M.	Feb. 19